

NORTHERN DISTRICT OF TEXAS

FILED

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

OCT 18 2006

CLERK, U.S. DISTRICT COURT

Deputy

TIMOTHY MICHAEL MAIN,

§

Petitioner,

§

VS.

NO. 4:06-CV-203-A

DOUGLAS DRETKE, Director,  
Texas Department of Criminal  
Justice, Correctional  
Institutional Division,

§

§

§

Respondent.

§

O R D E R

Came on for consideration the above-captioned action wherein Timothy Michael Main ("Main") is petitioner and Douglas Dretke, Director, Texas Department of Criminal Justice, Correctional Institutions Division, is respondent. This is a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. On June 14, 2006, the United States Magistrate Judge issued his proposed findings, conclusions, and recommendation, and ordered that the parties file objections, if any, thereto by July 5, 2006. Main timely filed written objections.

In accordance with 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, the court makes a de novo determination of those portions of the proposed findings or

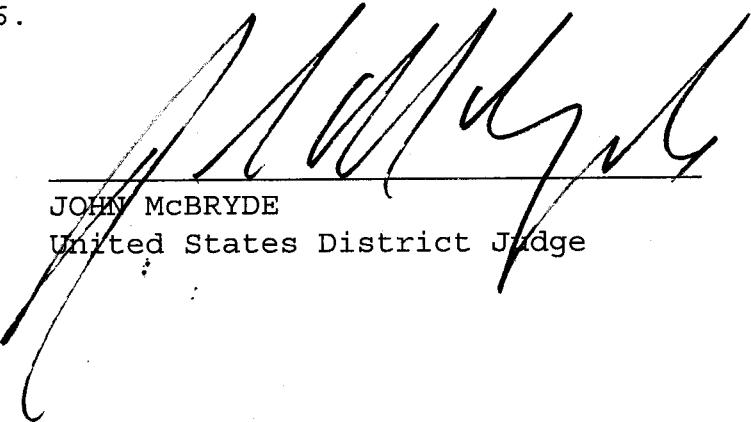
recommendations to which specific objection is made. United States v. Raddatz, 447 U.S. 667 (1980). The court need not consider any nonspecific objections or any frivolous or conclusory objections. Battle v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

Main makes one specific objection to the magistrate judge's finding. He argues that the merits of his habeas petition were rare and exceptional, and thus his petition should have been equitably tolled. Main's argument is misplaced. For equitable tolling to apply, there must be rare and exceptional circumstances that prevent the timely filing of a petition. See Davis v. Johnson, 158 F.3d 806, 811 (5th Cir. 2006). The court agrees with the magistrate judge that, regardless of the merits of Main's habeas petition, the requisite rare and exceptional circumstances surrounding the filing of such petition did not exist. Therefore,

The court accepts the findings, conclusions and recommendation of the magistrate judge and ORDERS that the

petition in this action be, and is hereby, dismissed with  
prejudice.

SIGNED October 18, 2006.

  
JOHN McBRYDE  
United States District Judge